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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JASON KING, CRAIG SMITH,
GREG MCKASKLE, and ANDREW DOVE

Appeal 2007-3709
Application 09/976,726¹
Technology Center 2100

Decided: November 17, 2008

Before JOHN C. MARTIN, JEAN R. HOMERE, and
CAROLYN D. THOMAS, *Administrative Patent Judges*.

Opinion for the Board filed by *Administrative Patent Judge THOMAS*.

Opinion Concurring-in-part and Dissenting-in-part filed by *Administrative Patent Judge MARTIN*.

THOMAS, C., *Administrative Patent Judge*.

DECISION ON APPEAL

I. STATEMENT OF THE CASE

¹ Application filed October 12, 2001. The real party in interest is National Instruments Corporation.

Appellants appeal under 35 U.S.C. § 134 from a final rejection of claims 1-25, 32-44, 46-60, and 62-89 (claims 26-31, 45, and 61 are cancelled) mailed January 6, 2006. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part.

A. INVENTION

Appellants invented a system, method, and memory medium for enabling a graphical program to receive and respond to programmatic events, such as user interface events. The graphical program may include a graphical user interface having various interface elements and a block diagram having a plurality of nodes indicating the functionality of the graphical program. (Spec., Abstract.)

B. ILLUSTRATIVE CLAIM

The appeal contains claims 1-25, 32-44, 46-60, and 62-89. Claims 1, 19, 23, 32, 36, 53, 66, 86, and 87 are independent claims. Claim 1 is illustrative:

1. A computer-implemented method for creating a graphical program, the method comprising:
 - creating a graphical user interface for the graphical program in response to first user input;
 - displaying a first node for receiving user interface events in a block diagram for the graphical program in response to second user input;
 - receiving third user input explicitly specifying one or more interface events to configure for the first node;

configuring the first node to receive the one or more user interface events explicitly specified by the third user input during execution of the graphical program; and

associating one or more portions of graphical code with the first node in response to fourth user input, wherein each portion of graphical code comprises one or more nodes for responding to one or more of the user interface events which the first node is configured to receive.

C. REFERENCES

The references relied upon by the Examiner in rejecting the claims on appeal are as follows:

Cain	US 5,651,108	Jul. 22, 1997
Zizzo	US 6,578,174 B2	Jun 10, 2003 (filed Jun. 8, 2001)

D. REJECTIONS

The Examiner entered the following rejections which are before us for review:

Claims 80 and 81 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement;

Claims 1-7, 10-25, 32-44, 46-60, 62-79, and 82-89 are rejected under 35 U.S.C. § 102(b) as being anticipated by Cain; and

Claims 8 and 9 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Cain in view of Zizzo.

II. PROSECUTION HISTORY

Appellants appealed from the Final Rejection and filed an Appeal Brief (App. Br.) on June 12, 2006. The Examiner mailed an Examiner's Answer (Ans.) on September 11, 2006. No Reply Brief is shown in the record.

III. ISSUES

Whether Appellants have shown that the Examiner erred in rejecting the claims as being anticipated by Cain and/or obvious over the combination of Cain and Zizzo; and

Whether Appellants have shown that the Examiner erred in rejecting the claims as failing to comply with the written description requirement.

IV. FINDINGS OF FACT

The following findings of fact (FF) are supported by a preponderance of the evidence.

Cain

1. Cain discloses that "GUIs [graphical user interfaces] are essentially 'user-centered,' meaning that the user, not the program, 'directs the action' and establishes an appropriate data-model and event-model for his or her needs." (Col. 2, ll. 59-62).

2. Cain discloses that "[d]uring or after cursor movement, the user may generate user-event signals (e.g., mouse button 'clicks' and 'drags') for selecting and manipulating objects, as is known in the art." (Col. 8, ll. 6-9).

3. Cain discloses "an object-based, interactive visual-programming language accessible via a graphical user interface (GUI)." (Col. 3, ll. 21-23).

4. Cain discloses “an object-based visual programming language which simplifies event-driven programming by non-experts via direct manipulation of visual objects on the screen.” (Col. 3, ll. 57-60).

5. Cain discloses that “the user places screen objects (e.g., boxes, screen buttons, tables objects, and the like) on an on-screen window or ‘form,’ visually attaches selected ‘properties’ and ‘methods’ to the screen objects, and then establishes an ‘event model’ that dictates how and when these properties and methods will be invoked.” (Col. 3, ll. 25-30).

6. Cain discloses that “the button object **453** of FIG. 4C is contained within the form object **452** An object’s visual and spatial relationship to other objects within a containership model affects its properties and behavior.” (Col. 14, ll. 58-67).

7. Cain discloses that “[c]ontainership, therefore, provides an intuitive, visual approach to object-based inheritance scheme.” (Col. 15, ll. 7-9).

8. Cain discloses “a ‘default’ button **453** with the generic name ‘LABEL’ . . . the button name can be changed at any time during design.” (Col. 11, ll. 6-10).

V. PRINCIPLES OF LAW

"Both anticipation under § 102 and obviousness under § 103 are two-step inquiries. The first step in both analyses is a proper construction of the claims. . . . The second step in the analyses requires a comparison of the properly construed claim to the prior art." *Medichem, S.A. v. Rolabo, S.L.*, 353 F.3d 928, 933 (Fed. Cir. 2003) (internal citations omitted).

"[A]nticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim" *In re King*, 801 F.2d 1324, 1326 (Fed. Cir. 1986) (citing *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1458 (Fed. Cir. 1984)). "[A]bsence from the reference of any claimed element negates anticipation." *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565, 1571 (Fed. Cir. 1986).

Appellants have the burden on appeal to the Board to demonstrate error in the Examiner's position. See *In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) ("On appeal to the Board, an applicant can overcome a rejection [under § 103] by showing insufficient evidence of prima facie obviousness or by rebutting the prima facie case with evidence of secondary indicia of nonobviousness.") (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)). Therefore, we look to Appellants' Brief to show error in the proffered prima facie case. Only those arguments actually made by Appellants have been considered in this decision. Arguments which Appellants could have made but chose not to make in the Brief have not been considered and are deemed to be waived. See 37 C.F.R. § 41.37(c)(1)(vii).

VI. ANALYSIS

Grouping of Claims

In the Brief, we find that Appellants' arguments can be grouped as follows:

- I. For claims 5, 6, 7, 10, 11, 15, 19, 22, 23, 25, 32, 36, 37, 39, 41, 42, 44, 46-54, 56, 58-60, 62-67, 74, 75, 78, 82-84, 86, 70,

72, 79, and 82, Appellants substantially repeat the same argument made for claim 1. We will, therefore, treat these claims as standing or falling with claim 1.

- II. For claims 3, 4, 20, 21, 33, 34, 35, and 69, Appellants substantially repeat the same argument made for claim 2. We will, therefore, treat these claims as standing or falling with claim 2.
- III. For claims 40, 57, and 73, Appellants substantially repeat the same argument made for claim 12. We will, therefore, treat these claims as standing or falling with claim 12.
- IV. For claim 14, Appellants substantially repeat the same argument made for claim 13. We will, therefore, treat claim 14 as standing or falling with claim 13.
- V. For claims 17, 18, 71, and 87-89, Appellants substantially repeat the same argument made for claim 16. We will, therefore, treat these claims as standing or falling with claim 16.
- VI. For claims 38, 55, 76, and 77, Appellants substantially repeat the same argument made for claim 24. We will, therefore, treat these claims as standing or falling with claim 24.
- VII. For claims 68 and 85, Appellants substantially repeat the same argument made for claim 43. We will, therefore, treat these claims as standing or falling with claim 43.
- VIII. For claim 9, Appellants substantially repeat the same argument made for claim 8. We will, therefore, treat claim 9 as standing or falling with claim 8.

IX. Claims 80 and 81 will be addressed separately.

See 37 C.F.R. § 41.37(c)(1)(vii). *See also In re Young*, 927 F.2d 588, 590 (Fed. Cir. 1991).

The Anticipation Rejection

We first consider the Examiner's rejection of the claims under 35 U.S.C. § 102(b) as being anticipated by Cain.

Group I

Regarding claim 1, Appellants contend that "Cain clearly teaches that certain events, such as the push-button event, are attached to the button by default. Cain does not teach configuring the button to receive one or more user interface events that have been explicitly specified by the user, as recited in claim 1." (App. Br. 9-10.)

The Examiner found that Cain discloses that the "users can change or attach new user interface events which the button will respond to via input on the graphical user interface." (Ans. 5.) We agree.

Specifically, Cain discloses that the graphical user interfaces are essentially "user-centered" whereby the user, not the program, directs the action and establishes an event-model (FF 1). Cain further discloses that the *user* generates the user-event signals *for selecting* and manipulating objects (FF 2). In other words, Cain clearly discloses specifying user-driven "events." Therefore, we find that illustrative claim 1 reads on the above-noted teachings of Cain which is consistent with the claimed "receiving third user input explicitly specifying one or more user interface events to configure for the first node."

Appellants further contend that “Cain teaches that the methods which respond to the button events comprise text-based code, i.e., program code constructed in a text-based programming language, as opposed to graphical code which comprises one or more nodes.” (App. Br. 10.)

The Examiner found that Cain discloses in Figure 4I a first node (the “Label” button) being associated with graphical code, such as the graphical displayed code 491 (Ans. 21). We agree.

In addition, we find that Cain discloses using “an object-based, interactive visual-programming language” that simplifies event-driven programming (FF 3-4) by placing screen objects on a screen window, visually attaches properties to the objects, and establishes an event model that dictates how and when these properties are invoked (FF 5). Thus, we find that claim 1 further reads on Cain’s above-noted disclosure.

Therefore, we do *not* find that Appellants have shown error in the Examiner’s rejection of illustrative claim 1. Instead, we find that the Examiner has set forth a sufficient initial showing of anticipation. Therefore, we affirm the rejection of independent claim 1 and of claims 5, 6, 7, 10, 11, 15, 19, 22, 23, 25, 32, 36, 37, 39, 41, 42, 44, 46-54, 56, 58-60, 62-67, 74, 75, 78, 82-84, 86, 70, 72, 79, and 82 which fall therewith.

Group II

Regarding claim 2, Appellants contend that “the Examiner has equated the ‘first node’ recited in claims 1 and 2 with Cain’s Button. However, Cain’s button does not comprise one or more sub-diagrams, and Cain does not teach displaying portions of graphical code within sub-diagrams of the button.” (App. Br. 10.)

Appellants further contend that “Cain also does not teach, ‘receiving user input explicitly specifying one or more user interface events to which each of the sub-diagrams of the first node corresponds,’ as recited in claim 3.” (App. Br. 11.)

The Examiner found that Cain’s Figs. 5A-H and 6A-M discloses an Object Tree that graphically shows the hierarchical relationship between nodes (Ans. 22). The Examiner further found that Cain discloses that “objects” may be contained within other objects and that objects contained within other objects inherits the events from the parent object (Ans. 7). We agree.

Specifically, Cain discloses a button object being contained within the form object and how this approach provides an intuitive visual approach to object-based inheritance (FF 6-7). Therefore, we find that Cain’s disclosure is consistent with specifying sub-diagrams and specifying events which each of the sub-diagrams corresponds. Thus, claim 2 reads on Cain’s visual containership approach.

Therefore, we do *not* find that Appellants have shown error in the Examiner’s rejection of claim 2. Instead, we find that the Examiner has set forth a sufficient initial showing of anticipation. Therefore, we affirm the rejection of claim 2 and of claims 3, 4, 20, 21, 33, 34, 35, and 69, which fall therewith.

Group III

Regarding claim 12, Appellants contend that “Cain simply does not teach displaying portions of graphical code within a push-button.” (App. Br. 13.)

The Examiner found that at least Cain's Fig. 4I shows the first node (the "label" button) is associated with graphical code, such as the graphical display code 491 (Ans. 24). We agree.

Specifically, Cain discloses displaying the graphical code, e.g., a dialog box having a title bar **491** displaying "Greetings", associated with a node (label button) (Cain, col. 13, ll. 8-15).

Therefore, we do *not* find that Appellants have shown error in the Examiner's rejection of claim 2. Instead, we find that the Examiner has set forth a sufficient initial showing of anticipation. Therefore, we affirm the rejection of claim 2 and of claims 3, 4, 20, 21, 33, 34, 35, and 69, which fall therewith.

Group IV

Regarding claim 13, Appellants contend that "the push-button events explicitly specify the action performed on the push-button, i.e., the button click, but do not explicitly specify the push-button itself (i.e., the user interface element on which the click was performed)." (App. Br. 13.)

The Examiner found that in Cain "[t]he user interface event of clicking the button shown in Figure 4I results in the display of a user interface element of the "Greetings" box; therefore, a specific action such as the display of a box is specified for a particular user interface element such as the button." (Ans. 25.) We agree.

Therefore, we do *not* find that Appellants have shown error in the Examiner's rejection of claim 13. Instead, we find the Examiner has set forth a sufficient initial showing of anticipation. Therefore, we affirm the rejection of claim 13 and of claim 14, which falls therewith.

Group V

Regarding claim 16, the Examiner found that “Cain teaches that the screen can be changed from design mode to run mode . . . In the run mode, the program is dynamically executed, and Cain states that ‘in the run mode, the button can be clicked’” (Ans. 26).

Appellants contend that “Cain teaches nothing at all about an event being dynamically registered during execution of the program.” (App. Br. 14.) Regarding claim 18, Appellants further contend that “Cain teaches nothing at all about an event being dynamically unregistered during execution of the program.” (App. Br. 16.) We agree with Appellants.

Although Cain discloses a run mode where the “button” can be clicked, this action is merely disclosed to test the default behavior of the button (Cain, col. 11, ll. 14-29). We find that the Examiner has not established and we do not readily find where Cain discloses “specifying a first user interface event to dynamically register during execution of the graphical program” nor has the Examiner established that Cain discloses “to dynamically un-registered user interface events.”

We cannot say that there are no “dynamically registered/unregistered events during execution” in the prior art that operate in a fashion analogous to that required by the claim. However, we can only rule on the basis of the evidence that is provided in support of the rejection, and we find it deficient. The allocation of burdens requires that the USPTO produce the factual basis for its rejection of an application under 35 U.S.C. §§ 102 and 103. *In re Piasecki*, 745 F.2d 1468, 1472 (Fed. Cir. 1984) (citing *In re Warner*, 379 F.2d 1011, 1016 (CCPA 1967)). The one who bears the initial burden of

presenting a prima facie case of unpatentability is the Examiner. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). Here, we find that the Examiner has not fulfilled the initial burden.

Therefore, we do find that Appellants have shown error in the Examiner's rejection of claim 16. Therefore, we reverse the rejection of claim 16 and of claims 17, 18, 71, and 87-89, which stand therewith.

Group VI

Regarding claim 24, Appellants contend that the "text-based code simply comprises lines of text. The text-based code does not comprises a plurality of interconnected nodes that visually indicate the event response functionality." (App. Br. 18.) We disagree.

As noted *supra*, Cain discloses using "an object-based, interactive visual-programming language" that simplifies event-driven programming (FF 3-4) by placing screen objects on a screen window, visually attaches properties to the objects, and establishes an event model that dictates how and when these properties are invoked (FF 5). Thus, we find that the disputed claim 24 limitation reads on Cain's above-noted disclosure.

Therefore, we do *not* find that Appellants have shown error in the Examiner's rejection of claim 24. Instead, we find the Examiner has set forth a sufficient initial showing of anticipation. Therefore, we affirm the rejection of claim 24 and of claims 38, 55, 76, and 77, which fall therewith.

Group VII

Regarding claim 43, Appellants contend that “Cain nowhere teaches the concept of receiving user input that explicitly specifies a name of a first user interface event to associate with the button.” (App. Br. 25.) We disagree.

Cain specifically discloses that a button name can be changed [by the user] at any time during design (FF 8). Thus, we find that the disputed limitation of claim 43 reads on Cain’s ability to change a name associated with a button.

Therefore, we do *not* find that Appellants have shown error in the Examiner’s rejection of claim 43. Instead, we find the Examiner has set forth a sufficient initial showing of anticipation. Therefore, we affirm the rejection of claim 43 and of claims 68 and 85, which fall therewith.

The Obviousness Rejection

We now consider the Examiner’s rejection of claims 8 and 9 under 35 U.S.C. § 103(a) as being obvious over the combination of Cain and Zizzo.

Regarding claim 8, Appellants contend that “Zizzo does not teach the concept of executing a graphical program, wherein during execution of the graphical program, a block diagram of the graphical program executes on a first computer system and a graphical user interface of the graphical program is displayed on a display of a second computer system.” (App. Br. 28.) We disagree.

The Examiner found that “Zizzo teaches that the circuit design executes on a server computer and the graphical user interface is displayed on client/user computers” (Ans. 43).

As for the Zizzo and Cain references (specifically Zizzo), Appellants merely argue that neither reference teaches or suggests the above-noted limitations without providing any meaningful analysis that explains why the Examiner erred. (App. Br. 28.) A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim. *See* 37 C.F.R. § 41.37(c)(1)(vii). We note that arguments which Appellants could have made but chose not to make in the Briefs have not been considered and are deemed to be waived.

Therefore, we do *not* find that Appellants have shown error in the Examiner’s rejection of claim 8. Instead, we find the Examiner has set forth a sufficient initial showing of obviousness. Therefore, we affirm the rejection of claim 8 and of claim 9, which falls therewith.

No combinability arguments

We note that Appellants have presented no arguments directed to the combinability of the references Cain and Zizzo. Accordingly, Appellants have waived any such arguments, and the combinability of such references will not be addressed here.

35 U.S.C. § 112, first paragraph

Claim 80

We next consider the issue of whether Appellants have shown that the Examiner erred in rejecting claims 80 and 81 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

We begin by noting that § 112, first paragraph, of the Patent Act states that the “specification shall contain a written description of the invention.” *35 U.S.C. § 112*. We note that the Court of Appeals for the Federal Circuit has held that “[t]o fulfill the written description requirement, the patent specification must describe an invention in sufficient detail that one skilled in the art can clearly conclude that the inventor invented what is claimed.” *Kao Corp. v. Unilever U.S., Inc.*, 441 F.3d 963, 967-968 (Fed. Cir. 2006) (quoting *Cordis Corp. v. Medtronic AVE, Inc.*, 339 F.3d 1352, 1364 (Fed. Cir. 2003)). Our reviewing court has cautioned, however, that “[t]he disclosure as originally filed does not ... have to provide in *haec verba* support for the claimed subject matter at issue.” *Cordis Corp. v. Medtronic AVE, Inc.*, 339 F.3d at 1364 (internal citation omitted). “Although [the applicant] does not have to describe exactly the subject matter claimed, ... the description must clearly allow persons of ordinary skill in the art to recognize that [he or she] invented what is claimed.” *In re Gosteli*, 872 F.2d 1008, 1012 (Fed. Cir. 1989) (citations omitted). Put another way, “the applicant must ... convey with reasonable clarity to those skilled in the art that, as of the filing date sought, he or she was in possession of the invention.” *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1563-64 (Fed. Cir. 1991) (emphasis in original). The written description, although it need not include information that is already known and available to the experienced

public, must be in sufficient detail to satisfy the statutory requirements, employing “[w]ords, structures, figures, diagrams, formulas, etc., that fully set forth the claimed invention.” *Space Systems/Loral, Inc. v. Lockheed Martin Corp.*, 405 F.3d 985, 987 (Fed. Cir. 2005) (quoting *Lockwood v. American Airlines, Inc.*, 107 F.3d 1565, 1572 (Fed. Cir. 1997)). “Precisely how close the original description must come to comply with the description requirement of section 112 must be determined on a case-by-case basis.” *Eiselstein v. Frank*, 52 F.3d 1035, 1039 (Fed. Cir. 1995) (quoting *Vas-Cath*, 935 F.2d at 1561). With respect to negative limitations, our reviewing court has determined that an “express intent to confer on the claim language the novel meaning imparted by [the] negative limitation” is required, such as an “express disclaimer or independent lexicography in the written description.” *Omega Engineering, Inc. v. Raytek Corp.*, 334 F.3d 1314, 1323 (Fed. Cir. 2003) (internal citations omitted).

In the instant case, we find Appellants do not disclose an express disclaimer or independent lexicography in the written description that provides support for the recited negative limitation of “does not include receiving user input specifying a connection between the first node and a second node.” While literal support is not required, we nevertheless find that Appellants have failed to convey with reasonable clarity to those skilled in the art that Appellants were in possession of the invention as of the filing date sought. Therefore, we find the weight of the evidence supports the Examiner's position. Accordingly, we will sustain the Examiner's rejection under 35 U.S.C. § 112, first paragraph, of claim 80.

Claim 81

It is the Examiner's position that the original Specification fails to provide descriptive support for the claim language "is performed independently of configuring other nodes." The basis for the Examiner's findings is that the limitation is "a negative limitation" and that it is "not positively recited in the specification of the present application" (Ans. 4).

However, we find that the claim language at issue is not a negative limitation and the Examiner has not established that Appellants' original Specification would not reasonably convey to one of ordinary skill in the art that applicants had possession of the claimed feature at the time of filing the present application.

Accordingly, we reverse the Examiner's 35 U.S.C. § 112, first paragraph rejection of claim 81 as lacking an adequate written description.

VII. CONCLUSIONS

We conclude that Appellants have *not* shown that the Examiner erred in rejecting:

- (1) Claims 1-7, 10-15, 19-25, 32-44, 46-60, 62-70, 72-79, and 82-86 under 35 U.S.C. § 102(b);
- (2) Claims 8 and 9 under 35 U.S.C. § 103(a); and
- (3) Claim 80 under 35 U.S.C. § 112, first paragraph.

However, we conclude that Appellants have shown that the Examiner erred in rejecting:

- (4) Claims 16-18, 71, and 87-89 under 35 U.S.C. § 102(b); and
- (5) Claim 81 under 35 U.S.C. § 112, first paragraph.

VIII. DECISION

In view of the foregoing discussion, we affirm the Examiner's rejection of claims 1-15, 19-25, 32-44, 46-60, 62-70, 72-80, and 82-86.

In view of the foregoing discussion, we reverse the Examiner's rejection of claims 16-18, 71, 81, and 87-89.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED-IN-PART

MARTIN, *Administrative Patent Judge*, concurring-in-part and dissenting-in-part.

I respectfully dissent from my colleagues' affirmance of the prior-art rejections of claims 1-15, 19-25, 32-44, 46-60, 62-70, 72-79, and 82-86 and the § 112, ¶ 1 rejection of claim 80. However, I concur in their reversal of the prior-art rejection of claims 16-18, 71, and 87-89 and the § 112, ¶ 1 rejection of claim 81.

Regarding the anticipation rejection of claim 1, Appellants do not contend that the Examiner (Ans. 4-5) erred in reading the step of "creating a graphical user interface for the graphical program in response to first user input" on the user's opening of the Form Design window depicted in Cain's Figure 4A (col. 11, ll. 4-5). Nor do Appellants contend that the Examiner (Ans. 5) erred in reading the recited "displaying a first node for receiving user interface events in a block diagram for the graphical program in response to second user input" on the user's clicking on Button Tool icon 433 (Fig. 4B) and resultant display of "default" button 453 (Fig. 4C), which is initially labeled "LABEL" (col. 11, ll. 5-8).

Regarding the steps of "receiving third user input explicitly specifying one or more interface events to configure for the first node" and then "configuring the first node to receive the one or more user interface events explicitly specified by the third user input during execution of the graphical program," Appellants agree (App. Br. 9-10) that the Examiner correctly construed these steps, when the recited "first node for receiving user interface events" of the second step is read on Cain's button 453, as requiring that the user have the capability of specifying the type of user interface event (i.e., user interaction with the interface) to which the button

will *respond*. See Ans. 5 (finding that in Cain “users can change or attach new user interface events which the button will respond to via input on the graphical user interface, as described with relation to Figures 4D-4E.”).

Instead, Appellants argue, correctly in my view, that the Examiner erred in finding that Cain discloses such a capability. Although Cain explains that button 453 is responsive to clicking of the mouse (col. 3, ll. 50-53; col. 6, ll. 29-31; col. 10, ll. 52-55; col. 12, ll. 19-20), which Cain describes as a user interface event (col. 10, l. 52-55), Cain does not indicate that this relationship is specified by the user. The responsiveness of button 453 to mouse clicks therefore appears to be a built-in feature of the graphical user interface (Fig. 4A) rather than a feature specified by the user. Cain’s Figures 4D and 4E, on which the Examiner relies, depict the ability to customize the methods that are performed in response to clicking on button 453, not an ability to specify the type of user interface event to which the button is responsive.

The Examiner nevertheless found that

[s]ince the events and methods are mutually inclusive entities that are correlated with each other, changing the method (changing the response to an event), changes the property of the overall event response; therefore, the examiner respectfully argues that Cain's teaching of configuring properties and methods for nodes (button) configures the overall user interface event.

Ans. 21. This position is unpersuasive. Whether or not it is fair to collectively characterize button 453’s responsiveness to mouse clicks and its customizable methods as an “overall user interface event,” the claim calls

for the “first node” to receive a “user interface event” that is specified by the user. The responsiveness of button 453 to mouse clicks is not specified by the user.

On the other hand, Appellants have not shown that the Examiner erred in finding that Cain discloses associating with button 453 graphical code that responds to clicking on button 453 (Ans. 5, 21), as is necessary to satisfy the last step of claim 1 when the recited “first node” is read on that button. The Examiner (*id.* at 21) reads the recited graphical code on Figure 4I, which shows that clicking on button 453 causes display of a dialog box 490 having a title bar 491 “(Greetings”) and a text body 492 (“Hello, world!”) (col. 13, ll. 12-15). Appellants have not explained, and it is not otherwise apparent, why the recited graphical code does not correspond to the lines that are used to form the dialog box.

For the above reasons, I would reverse the rejection of claim 1 and its dependent claims. For the same reasons, I would reverse the rejection of independent claims 19, 23, 32, 36, 53, and 66, which is likewise based on reading the recited “user interface events” (claims 23, 32, 36, 53, and 66) and “programmatic events” (claims 19 and 86) on Cain’s customizable methods, and would therefore also reverse the rejection of their dependent claims.

Claim 80, as to which the majority have affirmed the § 112, ¶ 1, written description rejection, reads as follows:

80. The method of claim 1,
wherein said receiving the third user input explicitly
specifying the one or more user interface events to configure for
the first node does not include receiving user input specifying a
connection between the first node and a second node.

My understanding of this claim is that the claimed “third user input explicitly specifying the one or more user events to configure for the first node” must represent something other than a connection between the first node and a second node. Although the language of claim 80 thus precludes the claimed “third user input” from representing a connection between the first node and a second node, that language does not preclude a different user input from representing such a connection, which is apparently how the Examiner is construing the claim. *See* Ans. 44 (“Even assuming *arguendo* that the specification provides [a] basis for the user interface event for the first node being specified by user input to a dialog box without *requiring* the user to specify a connection between the first node and a second node, this basis does not equate to a basis for *excluding* or *not including* the user from specifying a connection between the first node and a second as a means to specify the user interface event.”). The Examiner does not deny that the dialog box depicted in Figure 11 can be used to specify a user interface event other than a connection between the first node and a second node. Consequently, I would reverse the § 112, ¶ 1 rejection of claim 80.

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